

ARKANSAS SUPREME COURT

No. 06-1167

NOT DESIGNATED FOR PUBLICATION

EDWARD JOE HOOTEN
Petitioner

v.

GARY COTTRELL, CIRCUIT JUDGE
Respondent

Opinion Delivered January 4, 2007

PRO SE MOTION FOR LEAVE TO
PROCEED *IN FORMA PAUPERIS*
[CIRCUIT COURT OF CRAWFORD
COUNTY, CV 2005-395(I)]

MOTION DENIED.

PER CURIAM

Petitioner Edward Joe Hooten, who is incarcerated in the Arkansas Department of Correction and proceeding *pro se*, filed a civil complaint for breach of contract in the Circuit Court of Crawford County on August 11, 2005, against Argyle Dale Hooten, Jr. On August 2, 2006, petitioner tendered to this court a *pro se* petition for writ of mandamus, seeking a writ to compel Gary R. Cottrell, the circuit judge in whose court the complaint was pending, to hold a hearing on the complaint. Petitioner was duly advised by one of our staff attorneys of the need to submit a certified partial record of the proceedings in the lower court with the filing fee required to file a petition for writ of mandamus here.

On October 11, 2006, petitioner submitted the partial record but not the filing fee. Now before us is his motion asking to be permitted to file the mandamus action without paying a filing fee. Appended to the motion is petitioner's affidavit of indigency. As grounds for the motion to proceed *in forma pauperis*, petitioner states that he is unable to pay the fee, that he is entitled to the

writ, and that the mandamus petition is not brought for a frivolous or malicious purpose.

It is well settled that where no fundamental right is involved, filing fees do not violate due process. *Partin v. Bar of Arkansas*, 320 Ark. 37, 894 S.W.2d 906 (1995). Appellant has made no showing that a fundamental right is involved in this civil matter. Filing fees are ordinarily required in courts in this nation in civil matters on the premise that it is proper to require litigants to pay a small part of the expense necessary for the maintenance of the courts. *See Cook v. Municipal Court of Pine Bluff*, 287 Ark. 382, 699 S.W.2d 741 (1985) (*per curiam*). Petitioner has advanced no basis for granting his motion to file the mandamus petition without paying the fee. As a result, if petitioner desires to file the tendered petition for writ of mandamus, he is responsible for remitting within thirty days the required filing fee at his expense. *See Young v. Black*, 06-21 (Ark. Apr. 20, 2006) (*per curiam*); *see also Young v. Black*, 06-21 (Ark. Jan. 26, 2006) (*per curiam*).

Motion denied.